UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

THOMAS H. EWERT,

Plaintiff,

Case No. 20-cv-458-pp

v.

ANDREW M. SAUL,

Defendant.

ORDER GRANTING PLAINTIFF'S MOTION FOR LEAVE TO PROCEED WITHOUT PREPAYING THE FILING FEE (DKT. NO. 3)

The plaintiff has filed a complaint seeking judicial review of a final administrative decision denying his claim for disability insurance benefits under the Social Security Act. Dkt. No. 1. He also filed a motion for leave to proceed without prepaying the filing fee. Dkt. No. 3.

To allow the plaintiff to proceed without paying the filing fee, the court first must decide whether the plaintiff can pay the fee; if not, it must determine whether the lawsuit is frivolous. 28 U.S.C. §§1915(a) and 1915(e)(2)(B)(i).

Based on the facts in the plaintiff's affidavit, the court concludes that he does not have the ability to pay the filing fee. The plaintiff indicates that he is not employed, he is not married, and he has no dependents he is responsible for supporting. Dkt. No. 3 at 1. Although the plaintiff does states that he has no monthly wages or salary and no other source of income, id. at 2, under other household expenses he writes "Food Share," "Q Link Phone," and "Badger

Care," id. This would seem to indicate that the plaintiff receives these state benefits, although he does not list the monthly amount received. He does not list any other expenses. Id. at 2-3. The plaintiff does not own a car, a home, or any other property of value, and he has no cash on hand or in a checking or savings account. Id. at 3-4. The plaintiff states, "I have had no money since 2016. I have been counting on friends. I have been on Food Share and state insurance for the last 4 years." Id. at 4. As stated above, it seems that the plaintiff receives state benefits for the specific purposes of covering his food, phone bill, and insurance expenses and there is no other income to cover the plaintiff's remaining living expenses. The plaintiff attached to his request a letter from a friend which states, "I am helping [the plaintiff] out with housing and taking care of his day to day. I have known [the plaintiff] for 15 years he has had many thing happen to him from kidney stage 4 disease to heart attack to stroke. He was in hospital for 6 weeks. I have been taking him to therapy, doctors, exct. He has no right vision to the right side. Please HELP him. I need help." Dkt. No. 3-1. The plaintiff has demonstrated that he cannot pay the $350 filing fee and $50 administrative fee.

The next step is to determine whether the case is frivolous. A case is frivolous if there is no arguable basis for relief either in law or in fact. Denton v. Hernandez, 504 U.S. 25, 31 (1992) (quoting Nietzke v. Williams, 490 U.S. 319, 325 (1989); Casteel v. Pieschek, 3 F.3d 1050, 1056 (7th Cir. 1993)). A person may obtain district court review of a final decision of the Commissioner of Social Security. 42 U.S.C. §405(g). The district court must uphold the

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Commissioner's final decision as long as the Commissioner used the correct legal standards and the decision is supported by substantial evidence. See Roddy v. Astrue, 705 F.3d 631, 636 (7th Cir. 2013).

The plaintiff's complaint indicates that he was denied Social Security benefits for lack of disability, that he is disabled, and that the conclusions and findings of fact by the Commissioner when denying benefits are not supported by substantial evidence and are contrary to federal laws and regulations. Dkt. No. 1 at 1-2. At this early stage in the case, and based on the information in the plaintiff's complaint, the court concludes that there may be a basis in law or in fact for the plaintiff's appeal of the Commissioner's decision, and that the appeal may have merit, as defined by 28 U.S.C. §1915(e)(2)(B)(i).

The court **GRANTS** the plaintiff's motion for leave to proceed without prepaying the filing fee. Dkt. No. 3.

Dated in Milwaukee, Wisconsin this 24th day of March, 2020.

BY THE COURT:

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HON. PAMELA PEPPER
Chief United States District Judge